IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2248 OF 2004.

Shri Warna Sahakari Bank Ltd.,
Warnagar, Taluka Panhala,
Dist. Kolhapur. .... Petitioner.

Versus.

M/s.Abhinandan Tyres & Spares,
through Prop.Suresh Bhauso
Honshetty, Gala No.4, Mukt
Sainik Society Shopping
Centre, Kapad Market Road,
Thorat Chowk, Ichalkaranji,
Tal.Hatkanangale, Dist.Kolhapur. .... Respondent.

Shri Amit B.Borkar for the Petitioner.

Shri Ashok J.Chougule for the Respondent.

CORAM : ABHAY S. OKA, J.

Date on which Judgment is reserved : 10th February, 2006.

Date on which Judgment is pronounced. : 28th February, 2006.

JUDGMENT.

1. On 5th April 2004, this Court issued notice for final disposal at admission stage. On 20th January 2006 the Advocates appearing for the parties argued the petition fully for final disposal. After conclusion of the arguments, the learned Advocate for the Respondent

stated that the Respondent was trying to negotiate with the Petitioner-Bank for an amicable settlement of the dispute and therefore, the delivery of judgment may be postponed. Accordingly on that day and on the subsequent date i.e. on 27th January 2006 I did not deliver the judgment. On 12th February 2006 when the matter appeared before me, the Advocates appearing for the parties stated that the amicable settlement was not possible and therefore, the judgment may be delivered.

2. By this petition under Article 227 of the Constitution of India, the Petitioner which is a Cooperative Bank has taken exception to the order dated 29th September 2003 passed by the Divisional Joint Registrar of Cooperative Societies, Kolhapur, by which application made by the Respondent was allowed and the Petitioner-Bank was directed to consider the application made by the Respondent under the one time settlement scheme.

3. The learned Counsel for the Petitioner submitted that the Petitioner-bank had already obtained a recovery certificate under section 101 of the Maharashtra Cooperative Societies Act, 1960 (hereinafter referred to as "the said Act of 1960") and the said certificate had

attained finality. He pointed out that the Respondent applied to the Divisional Joint Registrar seeking a direction against the Petitioner to permit the Respondent to settle the dues under the One Time Settlement Scheme. He submitted that the Divisional Joint Registrar had no jurisdiction to entertain and try the said application. He submitted that the order impugned is without jurisdiction.

4. The learned Advocate appearing for the Respondent stated that the Petitioner-bank was under an obligation to implement one time settlement scheme formulated by the Reserve Bank of India. He submitted that the Petitioner-bank being a society registered under the said Act of 1960 was under the jurisdiction of the Divisional Joint Registrar of Cooperative Societies and therefore, the Divisional Joint Registrar had jurisdiction to issue the direction which he has issued.

5. I have considered the rival submissions. It is not in dispute that on the application made by the Petitioner-Bank, a recovery certificate was issued against the Respondent in favour of the Petitioner-Bank under section 101 of the said Act of 1960. It is also an admitted position that till today the Respondent has

not challenged the order granting the recovery certificate or the recovery certificate itself. Thus the recovery certificate has attained finality as of today. The learned Advocate for the Respondent could not show any specific provision of the said Act of 1960 which empowers the Divisional Joint Registrar to entertain the Application made by the Respondent. The contention raised by the Respondent in the application made before the Divisional Joint Registrar is that an application was made by the Respondent under one time settlement scheme which was not considered properly and was rejected by the Petitioner-bank. The application made by the Respondent was opposed by the Petitioner-bank by filing a reply and pointing out that the application made by the Respondent for settlement was not covered by the one time settlement scheme. It was contended that the application made by the Respondent before the Divisional Joint Registrar was not maintainable.

6. The objection raised by the Petitioner-bank to the jurisdiction of the Divisional Joint Registrar has been over-ruled by the Divisional Joint Registrar by observing that considering the facts and circumstances of the case, he has jurisdiction to try and decide the

application. He has, however, not recorded a finding that the jurisdiction has been conferred upon him under any particular provision of the said Act of 1960 or any other statute. In my view, there is no provision under the said Act of 1960 empowering the Divisional Joint Registrar to issue the direction which he had issued. Thus the Application made by the Respondent before the Divisional Joint Registrar was not maintainable in law.

7. At this stage it will be necessary to refer to the decision of the Division Bench of this Court reported in 2004(2) Mah.L.J. page 892 (Sathe Biscuits and Chocolates Co.Ltd. & another v/s. Bank of Maharashtra & others) to which I am a party. The Division Bench considered the scope of the guidelines issued by the Reserve Bank of India for one time settlement and came to the conclusion that the settlement could have taken place provided a case for recovery of the amount was pending and the policy will not apply to the cases where there are orders passed which have become final. In the present case, the recovery certificate issued under section 101 of the said Act of 1960 has not been challenged by the Respondent till today.

7. Hence the order impugned is totally unsustainable and must be set aside. Hence the following order:

O R D E R

(i) The impugned order dated 29th September 2003 is quashed and set aside. The Misc. application No.K-9/03 filed by the Respondents is hereby rejected.

(ii) This order will not preclude the Respondent from challenging the recovery certificate under section 101 of the said Act of 1960 in accordance with the law.

(iii) Rule is made absolute accordingly with no order as to costs.

Judge.